HOUSING POLICY COUNCIL
THE FINANCIAL SERVICES ROUNDTABLE

1001 PENNSYLVANIA AVENUE, N.W.
SUITE 500 SOUTH
WASHINGTON, D.C. 20004
Tel. 202.289.4322
Fax 202.628.2569

December 23, 2009

Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Ave., N.W.
Washington, D.C. 20551

Re: Regulation Z; Docket No. R-1366: Truth in Lending

Dear Ms. Johnson:

The Housing Policy Council of The Financial Services Roundtable ('HPC")[1] is pleased to submit its comments on the proposed changes in Regulation Z, Truth in Lending Act's ("TILA") rules for closed end credit secured by real property or a consumer's dwelling except for rules regarding rescission and reverse mortgages ("Proposal").

HPC applauds the work of the Federal Reserve Board ("Board") on this proposal. Changes in TILA are timely, and we believe that generally the Proposal creates rules which will assist consumers in better understanding the terms and conditions of the loans covered by the proposal. We have suggestions for changes in a number of parts of the Proposal which we have enumerated in the following pages. While we have seldom flatly disagreed with a specific proposal, we believe that many sections can be improved to provide better disclosure to consumers and simultaneously alleviate compliance burdens on those subject to the rules, or reduce the possibility of unintended consequences flowing from their adoption unchanged.

Additionally, we have taken the opportunity to list some of the areas in which harmonization of TILA rules with the Real Estate Settlement Procedures Act ("RESPA") rules could be accomplished. We urge the Board and HUD to jointly eliminate the inconsistencies between those two regulations before implementation of these proposed amendments to Regulation Z.

I. Implementation Period

HPC believes that the implementation period should be sufficient to permit those covered by the regulation to review the provisions of the rule, seek answers to ambiguous interpretations of which some provisions might be susceptible, and adopt all of the changes into their compliance systems (including technology requirements, training, controls, etc.). Such a period should be no less than 18 months after the date of the publication of the amendments in the Federal Register.

---

[1] The Housing Policy Council of The Financial Services Roundtable is a trade association which represents 28 of the leading national mortgage finance companies. HPC members originate service and insure mortgages. We estimate that HPC member companies originate approximately 75% of mortgages and two-thirds of mortgages serviced in the US.

The Board also should consider an implementation period that might be appropriate for those changes where the Board has taken a significantly different approach to the same issues addressed in the recently adopted changes in HUD's Regulation X. In those cases, it may be that the effective date should be some appropriate period after the Board and HUD agree upon regulations that are compatible.

II. Finance Charge and "All-In" APR

The Board requested comments in a number of areas related to the finance charge. While we have not responded to all of them, we have some specific comments we would like to emphasize.

HPC recognizes that elimination of the finance charge exclusions and the disclosure of an all-in APR have some benefits. However, we cannot support it because it will cause more loans to exceed HOEPA or state high cost loan law points and fees or APR thresholds and thus reduce the availability of credit and is inconsistent with the plain language of Section 106 of TILA and congressional intent in enacting TILA. Although Section 105 allows the Board to promulgate regulations that "... may contain such classifications, differentiations or other provisions, and may provide for such adjustments and exceptions for any class of transactions...", using an all-in approach to the calculation of finance charge for every closed end consumer credit transaction exceeds the Board's authority under TILA, since it's not an adjustment or exception for a class of transactions, but is for example, changing fees that are excluded from the finance charge in Section 106(e) for all closed end consumer credit transactions that would be subject to this subsection. Further, to consider an all-in approach for calculating APR for all closed end consumer credit transactions is simply substituting the Board's desires for clear congressional intention as to what is included and excluded from the calculation of APR. We understand the Board's desire to have an all-in APR that eliminates the exclusions, and if the Board persists in that position, notwithstanding congressional intent to the contrary, we would recommend that the Board consider various alternatives.

Below we discuss the following concerns and alternatives in more detail: (1) the impact on HOEPA, HPML and state high cost loans, (2) the impact on small settlement service providers and delays in closing, (3) conforming the inclusion fees of third parties selected by the consumer to the RESPA rule, (4) treatment of settlement agent charges and the need for settlement agents to provide timely notice of those charges to the creditor, (5) adjustments to the finance charge tolerance due to inclusion of costs beyond the creditor's control, and (6) treatment of fees for specific services.

a. Impact on HOEPA, HPML and State High Cost Loans

We appreciate the research the Board has conducted into the question of whether the proposed changes would cause more loans to become subject to HOEPA or state high cost loan laws. While we have not systematically conducted comparable research, we nevertheless believe the numbers of loans that will not be made because they exceed those limits will be significant. Many creditors will not make HOEPA and HPML Loans, and by significantly changing the parameters of these categories, HPC believes that consumer credit will be further restricted.

As to state high cost loans, we note that the Board's research appears to have understated the impact of the proposed changes. The research described by the Board utilized a database of prime and near prime loans, and therefore did not gauge the impact on subprime loans. A $200,000 loan amount was used, but the impact of the Board's changes will be much greater on smaller loan sizes. Most importantly, the Board's research focused only on the APR thresholds of state high cost loan law but did not consider how many loans would exceed the points and fees thresholds of these state laws. While only a few states have APR thresholds lower than the HOEPA APR thresholds, there are 20 states that have high cost loan law thresholds lower than HOEPA's 8% points and fees threshold.[2] Furthermore, many state high cost loan laws incorporate Regulation Z's definitions of points and fees, finance charges, and exclusions from the finance change so the proposed changes if enacted will dramatically increase the number of loans that exceed the states' points and fees threshold.

As to HOEPA loans made under section 226.32 of Regulation Z, the Board's research did not consider the impact of the HOEPA points and fees threshold. If the Board decides to eliminate most finance charge exclusions, at a minimum it should amend the definition of "points and fees" under section 226.32(b)(1) to continue to exclude all or most of the third party fees currently excluded from that definition. The charging of customary fees by third parties is not an indication that the creditor is charging excessive fees and should not cause a loan to become a HOEPA loan. In light of the fact that the definition of points and fees under Section 103aa(4) envisioned that these third party fees would be excluded provided that they met certain conditions, we believe that the Board has the authority to continue to exclude these fees from the points and fees. In addition, the Board should amend the definition of total loan amount in Comment 32(a)(1)(ii)-1 so that fees currently excluded from points and fees are not subtracted in determining the total loan amount.

As to higher-priced mortgage loans ("HPML") as defined by section 226.35 of Regulation Z, we recommend that the average prime offer rate ("APOR") calculations be revised to accurately reflect the additional fees included in an "all-in" APR to improve the ability of consumer's to compare APOR with the all-in APR. Currently the APOR is derived by converting the rate and fee information contained in the Freddie Mac PMMS into an Annual Percentage Rate. Since the annual percentage rate will now be an all-in APR, the calculation of the APOR should be revised to include the average amount of all of the fees that will now be included in the APR calculation. If this is not done, the comparisons between the APR and the APOR will be confusing. There is also a strong possibility that without the change, loans which are not truly higher priced will become subject to the HPML limitations with the associated resulting problems. We note that this change to the calculation of the APOR will also ensure that rate spread information that is reported under HMDA accurately reflects whether a loan is higher priced.

Finally, we note that the Board could calculate the all-in APR to reflect the settlement costs that are paid by the borrower, whether or not they are finance charges. The emphasis in this approach would be on including charges that the creditor can control, not those that it cannot control. Consumers would receive all of the disclosure benefits of an all-in APR, but reduction in credit due to including more fees in the finance charge and points and fees definition would be reduced.

b. Impact on Small Settlement Service Providers/Closing Delays

There are ancillary results that our members anticipate happening as a result of the elimination of most finance charge exclusions. For example, because it will include third party fees that creditors cannot control and because upon occasions those fees will be inaccurate, creditors may be exposed to liability in situations over which they have no control. In addition, many creditors, faced with this new set of rules, may conclude that it is in their interest to decide on a few settlement service providers to

[2] States with high cost loan law thresholds lower than HOEPA's 8% points and fees threshold: Arkansas, California, Colorado, District of Columbia, Georgia, Illinois, Indiana, Kentucky, Maine, Maryland, Massachusetts, New Jersey, New Mexico, New York, North Carolina, Ohio, Rhode Island, South Carolina, Tennessee, Wisconsin.

control costs and provide reliable service, leading to a reduction in use of larger numbers of what will probably be smaller settlement service providers. Therefore, consumers will have fewer settlement service alternatives. Finally, as a practical matter, if tolerances are not increased, errors in finance charges will result in a greater need to correct TILA disclosures, leading again to delays in closing loans.

c. Conforming Inclusion of Charges of Third Parties Selected By Consumer to RESPA Rule

To achieve greater harmony with the RESPA rules, we recommend that if the Board eliminates the exclusions for third party charges, the charges included should be limited to the amount estimated on the GFE plus 10%.

As both the Board and HUD have noted, the creditor often has no control over the fees imposed by third parties. Under the new RESPA rules, if the borrower is required by the creditor to use a particular provider or if the service is something from which the borrower may shop and the borrower selects the provider from a list of providers that the broker or creditor gives with the GFE, then the cost of those services many not exceed 10% above the estimated amounts.

We recommend that the amount included in the finance charges for third party settlement services shown in blocks 3, 4, 6, and 7 of the GFE after exclusion of services that would be provided in a comparable cash transaction be equal to the lesser of (1) the actual cost of those services, or (2) the total amount estimated on the GFE for those services, plus 10%.

This recommendation would reflect the true cost of credit, since if the cost exceeded the 10% tolerance, that additional cost would have been incurred only because the borrower decided to choose a more expensive provider than those identified by the broker or creditor. In addition, the disincentive to use small providers or those located in only small geographical areas would be diminished. The likelihood that there would be delayed closings because of errors would be diminished, and from the perspective of the creditor, the operational burdens would be reduced.

d. Settlement Agent Charges/Early Notification By Settlement Agent

If the Board eliminates most finance charge exclusions, the Board should address the fact that the fees of closing agents and the third parties they hire are the most difficult fees for lenders to control or estimate accurately. The Board could use its authority under section 129(l) to require closing agents to disclose their fees and the fees of third parties they hire to the creditor and the consumer at least eight business days prior to consummation.

Currently section 226.4(a)(2) of Regulation Z provides for a special rule for the settlement agent in recognition of the fact that the settlement agents are generally independent businesses that are not controlled by the creditor. Under this rule, if the creditor does not require the particular service for which the consumer is charged, the charge may be excluded from the finance charge. While the current rule for including settlement agent charges may be too narrow, the general standard for including all charges that are "incident to" an extension of credit is too broad for settlement agent charges. While most settlement agents charge reasonable fees for services and provide services that are reasonably required to close the loan, in some cases settlement agents charge fees that are either unreasonable in amount or are for services that are not needed to close the loan and were not requested by either the creditor or the borrower. Nether RESPA nor TILA currently provides any protection against such closing agent fees nor gives the creditor any means to prevent such fees from being charged. We urge that the charges of the settlement agent and other third parties hired by the settlement agent not be treated as finance charges to the extent that they are not reasonably required to close the loan nor requested by the creditor.

e. Adjustment of Finance Charge Tolerance

Regardless of whether the Board adopts the recommendations stated above, we recommend that the Board substantially increase the finance charge tolerances because the creditor can no longer control the amount of the charges included within the finance charge.

f. Treatment of Fees for Specific Services

Under the Proposal to add a new §226.4(g), premiums for voluntary debt cancellation and debt suspension fees and for voluntary credit insurance may not be excluded from the finance charge for closed-end mortgage transactions. As a practical matter, including these premiums and fees in the finance charge will make it very difficult to continue to offer these products that help prevent foreclosure in the event of death, disability, or unemployment.

The Board's proposal to require credit insurance premiums to be included in the finance charge on all closed-end transactions secured by real property or a dwelling, without exception, appears to contravene the express language of the Truth in Lending Act (TILA). Under TILA (at 15 U.S.C. §1605(b)), charges for credit life, accident, or health insurance written in connection with any consumer credit transaction are specifically excluded from the finance charge if (1) the coverage of the debtor by the insurance is not a factor in the approval by the creditor of the extension of credit, and this fact is clearly disclosed in writing to the person applying for or obtaining the extension of credit; and (2) the person to whom the credit is extended gives specific affirmative written indication of his desire to do so after written disclosure to him of the cost thereof.

The Board is proposing to include credit insurance premiums in the finance charge for all closed-end transactions secured by real property or a dwelling under its authority contained in TILA at 15 U.S.C. §§1604(a) and (f). Sections 1604(a) and (f) state that "The Board shall prescribe regulations to carry out the purposes of this subchapter." The purpose of TILA is contained in 15 U.S.C § 1601(a), which states, "It is the purpose of this subchapter to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit, and to protect the consumer against inaccurate and unfair credit billing and credit card practices." The inclusion of voluntarily purchased credit insurance premiums in the finance charge does not advance this purpose, contradicts the express language of TILA, and only serves to act as a de facto prohibition against the product. Accordingly, HPC believes that the Board lacks clear authority to require that credit insurance premiums be included in the finance charge when the creditor complies with TILA's specific requirements to exclude the insurance premiums from the finance charge.

Should the Board nevertheless propose to include premiums for voluntary credit insurance in the finance charge for closed-end mortgage transactions, it appears that monthly outstanding balance ("MOB") credit insurance premiums will have to be included in the finance charge calculation. There is no exception for credit insurance calculated and paid on a monthly basis, as is typically contained in state predatory lending statutes.[3]

Most MOB products are monthly renewal term products, meaning that they have a term of only one month and are renewable each month as long as the premium is paid. In its current form, the Board's proposal contains no guidance on whether only the first month of MOB premium must be included in the finance charge or whether the premium for the entire term of the loan must be included.

We request that the Board specifically exclude from its proposed requirement to include credit insurance premiums in the finance charge for all closed-end mortgage transactions, all credit insurance premiums calculated and paid on a monthly basis, in conformance with state predatory lending statutes. Alternatively, the Board should only require the first month's worth of MOB premium to be included in the finance charge since the product is a month-to-month term product.

The Board is also asking for comment on the appropriateness of retaining the current exclusions from the finance charge of premiums for insurance against loss or damage to property or against liability arising out of the ownership or use of property. HPC believes that hazard insurance, which includes flood insurance, should be excluded from the finance charge because a prudent borrower would insure his home whether or not it was mortgaged. Including the cost of hazard insurance in the finance charge and APR would make comparison of loan costs between different creditors more difficult, because different creditors may use different estimates of the cost of insurance. The actual costs will reflect the consumer's choices regarding deductibles, coverage amounts, risks insured and other variables within the consumer's control.

HPC believes that flood insurance should be treated as a form of hazard insurance, and that hazard insurance should be excluded from the finance charge because a prudent borrower would insure the home whether or not it was mortgaged. Including the cost of hazard insurance in the finance charge and APR would make comparison of loan costs between different creditors more difficult, because different creditors may use different estimates of the cost of insurance. The actual costs will reflect the consumer's choice

HPC does not object to treating insurance available through an affiliate of the creditor as being available from or through the creditor. We recommend, however, that Comment 4(d)-8 be further clarified to state that the disclosure may be made by the affiliate. We also recommend that proposed section 226.38(j)(4) also refer to the disclosures required to exclude property insurance available from or through the creditor from the finance charge under section 226.4(d)(2), if applicable.

Points and other fees paid by the seller of the property should continue to be excluded from the finance charge, on the basis that the borrower does not pay these charges. In addition, the final regulation should clarify that amounts paid by employers on a relocation loan should also be excluded.

Any fees charged to pay off and discharge or subordinate any existing loan upon consummation of a new loan should continue to be excluded from finance charges. Comparisons between creditors will not be affected since those charges will be the same regardless of which creditor is selected for the loan.

[3] For example, see Illinois 815 ILCS 137/40 and 205 ILCS 635/5-15; Indiana 24-9-3-1; New Jersey 46:10B-25(a); North Carolina 24-10.2(b); New Mexico 58-21A-4; New York 6-L(2)(h); Ohio 1345.031(B)(11); and South Carolina 37-23-70 (B).

Similarly tax liens or repayment of other debts as part of a consolidation loan are amounts the consumer already owes.

Fees charged to modify a loan or to convert it from an adjustable to a fixed rate should continue to be excluded from the finance charge. The disclosure should continue to reflect the payments and fees assuming that the consumer pays the loan according to the legal obligation.

Costs of repairing or completing construction on a property should not be included in finance charges. Whether or not the consumer was seeking the loan, the consumer would want to complete the construction and would want to keep their property in good repair. Including estimates of these costs would make it more difficult to focus on true loan costs.

We recommend that the exclusion of government recording fees be retained, since because of their nature, including them in the finance charge will not assist comparative shopping. As a practical matter, the fees are sufficiently high in some states (such as New York) that including them may cause the loan to exceed high cost loan triggers.

Charges payable in a comparable cash transaction such as property taxes, fees and taxes imposed to record the deed would be excluded (see proposed comment 4(g)-3). We suggest that the list be expanded to include such additional charges as fees for preparing the deed, real estate broker's fees, fees of the borrower's attorney, escrow agent charges and fees for services required under the purchase and sale agreement with the seller. It would also be helpful if the Board and HUD coordinate so that such charges were listed in a separate block on the GFE from the charges that are included in the Finance Charge.

It is not unusual for a borrower to request optional services not incidental to the mortgage loan transaction but which are consummated at the time the loan transaction is consummated. Many of those services have a fee or cost associated with them, and we recommend that they not be included in finance charges. These are services such as automatic payment of a mortgage payment monthly for which the consumer's bank charges a fee, establishment of a checking account at an affiliate or at the creditor itself, etc.

Payments into escrow should continue to be excluded from finance charges if such amounts would not otherwise be included in the finance charges.

With respect to premiums and rebates, we make separate recommendations. Where the premium will be paid after a loan is consummated, it should be clear whether the premium or rebate is part of the legal obligation and we agree that the disclosures should reflect that premium or rebate. However, where the creditor pays amounts prior to consummation, such as marketing credits, such premiums or rebates may not be part of the legal obligation. We would therefore recommend that the proposed comment 38(c)(5)(iii)-2 should be clarified, and amounts paid by the creditor at or before consummation may be used to reduce the finance charge. We also note that creditors may offer rate reduction mortgages where the interest rate will decrease if the consumer makes a specified number of timely payments. These programs are generally offered to borrowers who have less than excellent credit as an incentive to make timely payments. For such loans we ask that the proposed comment be clarified so that the creditor should assume that timely payments will be made on rate reduction mortgages or that they will not, and reflect or not reflect the decreased rate accordingly.

III. Credit Insurance Disclosures

The Board is proposing to add a new §226.38, requiring new credit disclosures to be provided on all closed-end credit transactions secured by real property or a dwelling. The Board is also proposing to add new Appendices G and H to Part 226, which are a set of new Model credit insurance disclosures applicable to all open-end or closed-end (not secured by real property) credit transactions. The new disclosures contained in the proposed Models are identical to the new disclosures contained in proposed §226.38.

The proposed §226.38(h)(3) requires the creditor to provide the consumer with a disclosure, for all closed-end credit transactions secured by real property or a dwelling, stating that if the consumer already has insurance, then the policy or coverage may not provide the consumer with additional benefits. HPC believes that this disclosure would be factually inaccurate and is therefore, inappropriate and misleading to the consumer and should not be required.

Because credit insurance, by the very nature of the product, only provides coverage for a specific loan, it will always provide the consumer with additional insurance benefits and coverage that he did not have before he took out the loan. One of the accepted methodologies consumers use for determining how much insurance coverage to obtain is to calculate the total amount of indebtedness they have and secure coverage for at least that amount. Once the consumer obtains insurance coverage, if he subsequently incurs any additional indebtedness, then he is necessarily short of coverage by the amount of the new indebtedness.

Credit insurance, by definition, always provides additional benefits and coverage since it provides the consumer with a way to pay for an indebtedness that he did not have when he procured his already existing insurance coverage. Accordingly, we are requesting that the Board not adopt the disclosure contained in proposed §226.38(h)(3) and remove it from the Model disclosures in proposed Appendices G and H to Part 226.

The Board's proposed §226.38(h)(2) will require the lender to make the following disclosure: "**STOP**. You do **not** have to buy this product to get this loan." HPC finds this language too harsh. We suggest that the Board revise §226.38(h)(2), and the Model disclosures, to conform to the language approved in most states: "This product is voluntary and you may cancel it at any time." This is a more affirmative approach to the purchase transaction that informs, but does not berate the consumer.

The Board's proposed §226.38(h)(4) will require the lender to make the following disclosure: "Other types of insurance can give you similar benefits and are often less expensive." This statement is inaccurate because it compares apples to oranges and is based on the erroneous presumption that all insurance is the same.

There is no other insurance product on the market tied to the outstanding balance or decreasing on a scheduled payment basis that covers any remaining outstanding indebtedness. Ordinary life or term insurance is only available in much larger amounts than is necessary to cover the average outstanding consumer indebtedness. The proposed statement presupposes very much more insurance than is needed, which is not a similar benefit. Additionally, ordinary or term life is only less expensive on a unit cost basis. The actual amount required to be expended for a typical credit insurance policy is, in reality, extremely small when compared to the hundreds and thousands of dollars required to purchase the typical ordinary or term life product. Accordingly, HPC recommends deletion of the disclosure contained in §226.38(h)(4) and the accompanying Model disclosures.

The Board's proposed §226.38(h)(9) requires the lender to disclose the term of the credit insurance policy in years. Most credit insurance policies sold in connection with real estate loans are MOB products. As previously stated, MOB products have a month-to-month term, not an annual term. Accordingly, it is not possible to state the term of the policy in years. HPC recommends that §226.38(h)(9) and the Model disclosures be revised to allow for the disclosure of the insurance term in months or years, as applicable.

IV. Eligibility Criteria

The Board is soliciting comment on whether creditors should be required to determine whether the consumer meets the credit insurance product's age or employment eligibility criteria after the product is sold (*e.g.*, before renewing an annual premium), or whether creditors should be required to provide notice when the consumer exceeds the age limit of the product after enrollment. HPC believes that such a requirement would not only be unnecessary and unduly burdensome, but also impossible to comply with.

Such a requirement is unnecessary because eligibility is only determined before the inception of coverage, not upon renewal. Additionally, pursuant to state law, the insurer already tracks the customer's age and sends a termination notice to the customer once he reaches the maximum coverage age. Requiring the creditor to do likewise would be duplicative. To require the creditor to keep tabs on the customer's employment status is unduly burdensome because it would require creditors to continually contact thousands of customers on an ongoing basis, requiring endless resources. Such a requirement is also impossible to comply with because creditors often have no way of knowing the customer's future employment status.

V. Escrow

The Board is soliciting comment on whether premiums or other amounts for credit life insurance and other similar products should be included or excluded from the disclosure of escrows for taxes and homeowner's insurance. HPC believes that it would be inappropriate for credit insurance to be included in the amount escrowed by the creditor.

Most state laws require lenders to immediately forward to the insurer any credit insurance premiums received; therefore the lender would not be allowed to deposit such premiums into escrow. Additionally, MOB credit insurance is now almost exclusively the only type of credit insurance written on real estate loans. Since a majority of states' adoption of predatory lending legislation, single premium credit insurance is, by and large, no longer written on real estate loans. Accordingly, there is no need to escrow for credit insurance because the premium payments are made monthly, to match the monthly term of the product, rather than in a single premium. The premiums are also paid in arrears, not in advance, for coverage already provided.

Escrow is appropriate for taxes and homeowner's insurance because those annual costs are typically very substantial and escrowing for them ensures that they get paid and protects the customer from inadvertently defaulting on his or her real estate loan. The failure to pay for credit insurance will not cause the customer to be in default on his or her loan. Additionally, the creditor requires the borrower to pay taxes and maintain homeowner's insurance. Those expenditures are not optional. On the other hand, credit insurance is almost always an optional product. To mix optional credit insurance with required escrow amounts for taxes and homeowner's insurance is likely to make the consumer mistakenly think that credit insurance is also required and create consumer confusion.

VI. General disclosure requirements

HPC compliments the Board on improving disclosures under Regulation Z with the current Proposal. While it will take a major effort by all parties involved to convert to the new disclosures, the new proposals will provide disclosures of terms that are important to the consumer in ways that the consumer should understand and are more likely to read than current disclosures. The comments of HPC on the disclosure proposals, therefore, focus on ambiguities and suggested changes that would improve the disclosures for all consumers. Some of the proposed disclosures conflict with RESPA and we urge the Board and HUD to coordinate to harmonize such disclosures between the regulations.

a. Key Questions to Ask About Your Mortgage; What Type of Mortgage is Right For You?

HPC believes that these forms focus on the correct information and with some minor suggestions for changes, believe they are appropriately drafted and presented. We recommend that mortgage brokers, as well as creditors, be required to provide these forms before providing an application form or collecting any fees.

b. *"Key Questions" form*

The second sentence of the first paragraph shouldn't use the term "risky features." That is a subjective term.

Question 1 – Some ARMs have an extended period of time before any adjustment in the rate occurs, so the language in that answer that says that the rates can go up or down "after a short period" can be misleading. It might be years before the first adjustment. We recommend that "after a short period" be deleted.

Question 2 – It would improve the answer if the phrase "your property taxes or insurance premiums increase" was deleted and a sentence was added saying that: "In addition, your property taxes and insurance might increase." The consumer should be aware that property taxes and insurance may increase regardless of what loan product the consumer chooses.

Questions 3 – The question is not phrased in the same form as it is phrased on other model forms, and it would be useful to harmonize that language with the way the question is asked in the other forms. The Board should consider using the phrase "reduce your loan balance" rather than "build any equity in your home."

Question 4 – One clarifying addition to the answer would be to add the phrase "even if your home does not decrease in value." That same phrase should also be added at the end of the last sentence in the answer in Question 3. The Board should eliminate use of subjective terms such as "large."

Question 7 – The way this question is phrased should be harmonized with the way the same question is phrased in other forms.

c. *"Fixed vs. Adjustable" form*

Under "ARMs" in first box, some ARMs do not change rates quickly, so it would be more accurate to say, "However, on some ARMs, both the rate and the payment may increase very quickly."

In the first box under "Fixed Rate Mortgages," it would be more accurate to say, "With a fixed rate mortgage, the interest rate and monthly payment generally stay the same for the entire loan period. However the interest rate and monthly payment often are higher in a fixed rate loan than the initial payment and rate on an ARM."

d. Adjustable Rate Loan Program Disclosures

The "Limits on Rate and Payment Changes" section should reflect the fact that many ARMs have different caps for the first adjustments and others. A sentence should be added to the effect "Your interest rate can increase no more than ( ) percentage points at the first adjustment, no more than ( ) percentage points in any subsequent (time period) period and no more than ( ) percentage points over the life of the loan."

HPC recommends that the Board clarify that it is permissible to disclose in the program disclosures that the initial rate is discounted, even if there is a possibility that the consumer may choose an initial rate that is not discounted. For example, on ARM programs whether the initial rate is not determined using the index or formula that applies to rate adjustments, the creditor will often not know at the time the disclosure is given whether the initial rate will be discounted from the fully indexed rate, the same as the fully indexed rate, or be a premium over that rate. Additionally, borrowers often have the choice of paying discount points and obtaining a lower initial interest rate, or taking a higher initial rate and receiving a credit towards closing costs. Since the disclosure is given prior to application, the creditor does not know what choice the borrower will make and whether the initial rate will be discounted, premium or neither. The Board might also consider including a statement that the initial rate may be based on the index plus a margin or may be higher or lower and to ask the creditor for more information.

e. *Other loan program disclosures*

HPC would be willing to see pre-application loan program disclosures for programs that have features identified in the Key Questions that present additional risks as long as they follow the same format and are not transaction specific. This would include loans with increasing step rates or step payments, fixed rate interest only loans, fixed rate loans with negative amortization, loans with required prepayment penalty features, loans with balloon payments, and "no doc" or "low doc" loans with higher pricing. In many cases creditors and mortgage brokers are already required by the Nontraditional Mortgage Guidance adopted by both federal and state regulators to provide information. We note that it would be useful for the Board to coordinate with other federal and state regulators to eliminate differences between the Board's Regulation Z disclosure requirements for non-traditional mortgages and the requirements contained in the Nontraditional Mortgage Guidance.

VII. Content of disclosures; early disclosures and adjustable-rate disclosures for transaction secured by real property or a dwelling; corrected disclosures

HPC supports the Comment in the Proposal that creditors may, in determining whether an application has been received, rely on RESPA and Regulation X even for a transaction not subject to RESPA. We also recommend that the Board further revise the Comment to state that for such transactions, creditors may also determine whether an application has been received by relying on ECOA and Regulation B.

We recommend that the early TILA disclosure be deemed to have been mailed in a timely fashion if it is mailed or delivered within either three "precise" business days or three "general" business days. Under the practice of most institutions, fewer employees work on Sundays and holidays than during the other days of the week, but in some instances, there is a small crew of employees that do work on those days. The ambiguity concerning whether or not the institution is open could be met by using the "precise" rule for defining numbers of days rather than the "general" rule.

Two other early disclosure rules should be harmonized with RESPA rules. First, we recommend that the creditor should be required to mail a revised TILA disclosure within three business days after the borrower amends his application or accepts a counteroffer to add a feature identified in the "Key Questions" form as presenting additional risks. These features are an adjustable rate feature, step rates, step payments, interest only payments, balloon payments negative amortization, prepayment penalty, or "no doc" or "low doc" programs with higher pricing. Other changes in loan terms should not require redisclosure, including such features as moving from an ARM to a fixed rate loan. We believe that how loan terms should be disclosed and when they should be redisclosed should be governed by TILA, not RESPA, and urge harmonization between the Board and HUD on that question.

The second point relates to fees. We urge a clarification to Comment 17(c)(2)(i)-1 stating that the creditor may estimate the amounts of fees using either (1) amount of fees based upon information available at the time the TILA disclosure is made, or (2) amounts shown on the GFE plus 10%, notwithstanding that Regulation X may require the revised GFE to disclose a lower amount.

HPC opposes the proposed rule that a "final" TILA disclosure should be received by the consumer at least three business days before consummation regardless of whether there have been changes since the initial disclosure. As the proposal recognizes, changes may occur after the "final" TILA disclosure has been received. We believe that the focus should be on what types of changes in loan terms, rates and fees should require a corrected TILA disclosure and a new waiting period.

We bring to the Board's attention that complying with the limitation on estimates will effectively require borrower's to have their rates locked more than a week before consummation, a result that may be inconsistent with the desire of some borrowers to float the rate up until consummation of the loan. Similarly, we would like clarification that the current provisions providing that disclosures affected by per diem interest are considered accurate applies to the final TILA disclosure and are not considered estimates. We also recommend that estimates of settlement charges be permitted on the final TILA disclosure to the extent that they are consistent with Regulation X requirements. Finally, requiring disclosures that are not estimates will require settlement costs to be finalized as much as a week before consummation.

Since the creditor does not control all closing costs, creditors will need to have the closing agent provide the Total Settlement Charges and information sufficient to determine the Finance Charges included within the interest and Settlement Charges at least 8 business days prior to closing. The Board also recognizes that most creditors provide either a GFE or HUD-1 according to Regulation X's timing rules to satisfy the Itemization of Amount Financed requirement, but the proposal would now not permit the use of the HUD-1 to fulfill this requirement unless it is delivered with the final TILA disclosure. If the Board desires to have closing agents finalize settlement costs and prepare the final HUD-1 so that a final TILA disclosure will require no estimates, then the regulation should explicitly require the closing agent to do so.

a. Alternatives to corrected disclosure

HPC supports Alternative 2. Requiring corrected TILA disclosures and a new waiting period if anything changes as suggested by Alternative 1 is not in the best interest of the public, and could result in endless and repeated delays in closings due to minor changes. For example, increasing fees that do not result in the APR being understated by more than the applicable tolerance should not require corrected TILA disclosures.

However, we would suggest minor changes in Alternative 2. Changes in loan terms should be redisclosed under TILA's timing rules, while changes in fees should be redisclosed under the RESPA's timing rules. Corrected disclosures and a new waiting period should only be required if the APR increases beyond the applicable tolerance or a feature identified in the "Key Questions" that increases risk is added.

We do not believe that decreases in the APR due to reduction in rate or in settlement costs need be redisclosed. Such changes benefit the consumer and should not necessitate delays in closing. A concern that not requiring redisclosures will lead to overstating charges on earlier disclosures is misplaced, because those will be self-correcting since they would place such a perpetrator in a serious competitive disadvantage. The Board should state that an overstated APR should be considered accurate. The purpose of the APR is to make sure creditors don't under-disclose costs and overstating APR would not conflict with that.

If notwithstanding our recommendation that a decrease in the APR should not trigger redisclosure, the Board continues to require redisclosure, we request the Board to clarify when an overstated APR will be considered accurate because the overstatement results from an overstated finance charge. We believe in each of these circumstances listed below an overstated APR will be considered accurate because the overstatement resulted from an overstatement of the finance charge and we would appreciate the Board addressing each of the situations directly in a Comment:

- A settlement charge included on the final TILA disclosure was included in the prepaid finance charge when it should have been excluded;

- The estimated amount of a settlement charge included on the final TILA disclosure was properly treated as a prepaid finance charge but the actual charge is waived or reduced;

- A charge that was treated as a prepaid finance charge was expected to be paid by the borrower when the final TILA disclosure was prepared is paid by the seller and excluded as the seller's points;

- The finance charge included within the payment schedule of the final TILA disclosure is overstated because the borrower negotiated a lower rate and the actual fixed rate or initial interest rate on an ARM is lower that the rate used to prepare the final TILA disclosure;

- The prepaid finance charge, initial interest rate and margin used to calculate the fully indexed rate on an ARM loan have not changed from the final TILA disclosure, but an updated lower index value results in a lower fully indexed rate and causes the finance charges included within the payment schedule of the final TILA disclosure to be overstated; and

- The final TILA disclosure reflected amounts for mortgage insurance premiums in the finance charge and APR but the borrower reduced the loan amount and eliminated the mortgage insurance premiums.

Under the comment to Alternative 2 in 19(a)(2)(iii)-1, we suggest changing language slightly in the parenthetical sentence in the middle of the first paragraph to read "(If a change occurs that makes a disclosed term inaccurate but does not require receipt of a corrected disclosure three business days before consummation, the creditor must disclose the changed terms at or before consummation, consistent with section 226.17(f).)"

A further suggestion that HPC would make is that the proposed Comment 17(c)(1)(iii)-3(i) clarify that for disclosures prepared prior to consummation the creditor may use any index value during the look-back period as of the date the disclosures are mailed or delivered, and that the final APR to which the previously disclosed APR is compared for accuracy may be calculated with any index value in effect during the look-back period before consummation.

Similarly, we recommend clarification of Comment 17(c)(1)(iii-3(iv) that such transactions are considered irregular transactions notwithstanding the fact that an index value in effect during the look-back period before consummation may result in a fully indexed rate that happens to equal the initial interest rate.

Finally, we would propose that the Board focus on what changes from a "pre-consummation disclosure" should require a corrected disclosure and new waiting period. We believe that should happen only if the APR increases beyond the tolerance or a feature identified in the "Key Questions" that increases risk (not, for example, moving from an ARM to a fixed rate loan) is added. A final disclosure with no waiting period should be given at consummation.

b. Format and content of disclosures

HPC members have a variety of issues involving the required forms and content of disclosures. We recognize that the desire is to improve the ability of consumers to read and understand the disclosures, and believe that a few changes will assist in making that possible. Here are changes that we urge the Board to consider:

- Provide more examples which cover, at a minimum, the structure of all of the standard mortgage programs of Fannie Mae, Freddie Mac, FHA, and VA;

- Do not require text to be printed on shaded background. It doesn't photocopy well;

- Failures to comply with format requirements should not give rise to damages;

- Permit both a mailing address and the property address to be shown on the form;

- Permit no more than two loan originator's unique ID to be shown on a loan, and if the loan is a retail loan, only one. Comment 38(g)(2) should reference registration as loan originators under the NMLS registry ;

- Step rate loans should only be defined to mean loans in which there is a step increase, not a step decrease, in loan payments;

- Clarify whether or not the total shown on line 1400 of the HUD-1 or HUD-1A may be used in the final TILA disclosure;

- Clarify that where both a broker sends a GFE to the borrower and the creditor sends an early TILA disclosure in a separate package to the borrower, the broker's provision of the GFE in accordance with RESPA requirements be deemed to satisfy the Itemization of Amount Financed requirements;

- We urge reconsideration of the statement that "the Board believes that to permit substitution of the HUD-1 settlement statement for the itemization without requiring that it be delivered three business days before consummation would be inconsistent with the purposes of the MDIA amendments." We believe that nothing in the MDIA restricts the use of estimates on TILA disclosures given prior to consummation, and that fact that the MDIA only required redisclosure and a new waiting period if the APR became inaccurate is consistent with the recognition that other disclosures may reflect estimates and that the closing should not be delayed because the final disclosures may be somewhat different than the estimated disclosures; and

- We recommend that an additional model form for the Itemization of Amount Financed be provided for use with closed-end mortgage loans. The new form should be an itemization of the disbursements from the loan amount, which would not contain a disclosure of the amount financed or prepaid finance charge.

c. Prepayment penalty disclosure

HPC recommends that model language be provided on how to disclose the limitations in the assessment of prepayment penalties under section 226.32 and 226.35.

We also recommend that in situations where the use of the two stage penalty calculation is permissible, creditors should be given the option of disclosing the actual maximum prepayment penalty.

The Board has clarified that it did not consider FHA loans on which payments had been received prior to the due date and for which interest was charged until the due date to have a prepayment penalty for any purpose under Regulation Z. We recommend that the clarification be incorporated into Proposed Comment 18(k)(l)-1, that for FHA loans and other loans on the monthly accrual amortization method, crediting a prepayment as of the next installment due date is not considered to be additional interest after prepayment in full and is not a penalty.

Finally, there may be instances in the agreement in which it is clarified that prepayments may not be charged. The creditor should be permitted to include on the notice an explanation of the circumstances under which a penalty will not be charged.

d. Comparison of APR to APOR

Because the Annual Percentage Rate will now be an all-in APR, the calculation of the APOR should be revised to include the average amount of all of the fees now included in the calculation.

We recommend that Proposed Comment 38(b)(3) be revised to indicate that the APOR may be determined as of either the date the disclosure is produced or provided, and to delete the reference to Comment 35(a)(2)-3 because the Comment states that the APOR is determined by the rate set date.

Because the APOR is calculated based on conforming loans with LTVs of 80% or less, the rate understates the average prime rate for loans that are not secured by owner-occupied properties, for loan amounts above the GSE loan limit and for loans with LTVs requiring mortgage insurance. We recommend, therefore, that the Board publish separate APORs for such loans so consumers will see an accurate comparison.

With respect to the disclosure "How Much Could I Save By Lowering My APR?" the use of interest rate and APR is confusing. We recommend that the disclosure be revised to say: "How much could I save by lowering my interest rate? For this loan, a 1% reduction in the interest rate could save you an average of $....each month."

Additionally, we suggest that the APR to APOR comparison should be incorporated into the FCR Model H-3 Credit Score Disclosure Form that was proposed on May 19, 2008. It would be helpful to show on one form not only the loan's APR and the APOR, but also for the consumer to see how his or her credit compares to others.

HPC believes that the mandated use of a graph will create serious programming problems surrounding an effort to place a single dot on a graph using a scale that will vary constantly. The graph proposed is not clear, nor will it be easily understood. If the consumer does not lock his rate up front, the information on this graph may change dramatically by the time the rate is set. We recommend as alternatives that the creditor be permitted to provide either a simple textual message telling the consumer to inquire about the rates available for a 30 year fixed rate prime loan (if that is a loan the consumer wants), or the rate for such a product with a 1 point origination fee on the date of the disclosure.

e. Escrow Accounts

HPC recommends that to facilitate better comparison between loans, the Interest Rate and Payment Summary for all first lien loans should include an estimated tax and insurance amount whether or not an escrow account is required or established. Absent that, unscrupulous originators could make an unfair comparison between a loan with an escrow account and one without.

We urge that the Board clarify that some items may be paid out of a required escrow account and some may be paid directly by the consumer. The escrow language in "More Information About Your Payments" should be modified to make that possibility clearly understood by the borrower.

We request a clarification to the requirements of Section 226.38(d)(l)(ii) that on a loan with an escrow account the possibility of an increase in the escrow payment will not trigger the disclosure. The consumer bears the risk of an increase in the cost of property taxes and insurance whether or not the consumer obtains a loan or has an escrow account established.

f. Other comments

HPC recommends that new disclosures concerning loans assumed by "subsequent consumers" be limited to those cases in which a consumer who was not obligated on the original loan and was not already an owner of the property purchases an interest in the property.

We recommend that disclosures related to rebate, late payment, property insurance, contract reference and assumption be eliminated. The Proposal recognizes that they are not of primary importance to the borrower and were not well understood. Since one goal is clarity of disclosures, and the Board recognizes that too much disclosure can lead to less well understood disclosure, disclosure of these matters is best eliminated.

We recommend that we not be required to provide an allocation of the current and new payment between principal, interest and escrow on interest only and negative amortization loans. The Disclosure of New Monthly Payment includes the amortizing payment as shown in model clauses H-4(H), and therefore the allocation is unnecessary. It is also a major compliance problem, in part because the escrow payments may also be in the process of adjustment according to RESPA requirements.

VIII. Prohibited acts or practices in connection with credit secured by real property or a consumer's dwelling.

The Proposal would prohibit payments to a mortgage broker or loan officer that are based on the loan's terms or conditions, and would prohibit a mortgage broker or loan officer from "steering" consumers to transactions that are not in the consumer's best interest in order to increase the originator's compensation. The Board's purpose in these revisions is to (i) provide for more transparency in the mortgage loan pricing so that consumers will be better equipped to shop among originators and (ii) to prevent the practice of steering. Below we address the issues the specific provisions on compensation and steering, and offer comments and suggestions that would better reach the Board's goals.

a. Compensation based on loan amount

For loan originators who are employees of lenders and mortgage brokers, we agree that compensation should not be based on loan terms and conditions, other than loan amount, with certain clarifications explained below.

HPC believes that the Board should permit loan originators to receive payments that are based on the principal loan amount, and should permit compensation to be based on total dollar amount of loans as well as total number of loans. We support Alternative Comment 36(d)(1)-10 to accompany Alternative 2 – paragraph (d). Payments based on the loan amount are common for virtually all of the participants in mortgage financing, and there is no good reason to make an exception for payments to employees or brokers by lenders. On refinances, the amount needed to pay off the borrower's loan is already set before the loan originator becomes involved. In the case of cash out refinances, it is the borrower who determines how much cash the borrower needs, and on purchase transactions it again is the borrower who determines how expensive a home to buy, the down payment to make, etc. On purchase transactions, it is the borrower, along with her Realtor, who determines how large of a home to buy and the down payment amount, and additionally, underwriting guidelines limit the amount of loan for which the borrower will qualify.

Since any incremental compensation for the employee or broker would be small, unless the "extra" borrowing was very large, any incentive for the employee or broker to try to persuade the borrower to borrower larger loan amounts seems so small as to be highly unlikely. The percentage of the loan amount that serves as the basis for determining compensation should be permitted to vary with loan size, and in particular, as loan size increases, compensators should be allowed to decrease that percentage. In addition, the Board should specifically allow creditors to pay a higher commission rate for lower loan amounts. This would provide an incentive for loan originators to originate loans in lower-priced neighborhoods as the originator would receive an amount that is comparable to loans originated in higher priced neighborhoods.

It is particularly important to permit lenders to consider the loan amount in paying brokers. While there are a number of ways that lenders can compensate their employees without utilizing the loan amount (loan volume, for example), prohibiting payments on loan amounts to brokers would distort the present market. For example, using loan volume might well be considered a violation of Section 8 of RESPA.

b. Other bases of compensation

We appreciate the Board specifically noting that compensation based on a fixed hourly rate is not considered compensation based on transaction terms or conditions. Certain kinds of loans, such as Community Reinvestment Act loans- loans to low-to-moderate income consumers or loans in low-to-moderate income census tracts- require more time and effort in their production and they should be encouraged. Compensation for such loans should not be limited to the same percentages as loans in different areas and to different consumers. We encourage the Board to specifically state that CRA and FHA loans should not be required to have the same percentage compensation as non-CRA and non-FHA loans.

Terms and conditions should not include other factors that are contained in compensation practices and guidelines. For example, good public policy should permit additional compensation for high pull through rates, high quality files, customer satisfaction, etc.

Loan originators sometimes act as conduits for amounts that are passed on to them to third parties in the payment of certain closing costs. Those amounts should be excluded from "compensation" in the rule.

Managers and supervisory personnel should not have their compensation limited by any restriction designed to ensure that compensation is not based upon terms and conditions of the loan.

c. Scope of coverage

i. Exemption for reasonable compensation of brokers

As to brokers, we agree that compensation rules should apply substantially as proposed where the broker's total compensation exceeds the greater of 2% or $500. However, we recommend that if the broker's total compensation does not exceed that amount, the compensation rules should not apply and the broker should be permitted to receive compensation from the creditor and the borrower. In addition, the anti-steering rules also should not apply to the broker in those circumstances since the reduced total compensation available will minimize any desire on the part of the broker to steer borrowers to a higher interest rate loan.

Under the RESPA rules, the amount of the broker's total compensation will be included in the amount disclosed as the origination charge on block 1 of the GFE. The broker will be bound by that GFE and will not be able to increase that amount absent a borrower requested change or a changed circumstance. Since the origination charge is disclosed to the borrower and is reasonable in amount, charging such a fee should not be considered an unfair or deceptive practice and should not be prohibited by the regulation. The overwhelming majority of broker transactions would fall within this limit, avoiding unnecessary disruption to the mortgage market and reducing compliance burdens on brokers. Where the broker's total compensation is reasonable, consumers will also benefit. It will enable consumers to choose the rate they want, rather than having to accept a higher rate so that the lender will pay the broker's compensation or having to accept a lower rate and having to pay all of the broker's compensation out of their own pockets.

ii. Segments of the Market

Care should be taken in adopting any rules under Regulation Z to make it as consistent as possible with already adopted RESPA rules. New RESPA rules become effective on January 1, 2010, and creditors and servicers have instituted major and costly changes in their processes, computer systems, training, forms and documents, and all the rest that must be done to comply with major rule changes.

With that in mind, we urge the Board to accept the RESPA approach to situations in which wholesale creditors and consumers will normally be making payments to originators. Since violations incur substantial penalties, clear guidance is needed. In the RESPA rules, compensation from both the creditor and consumer is permitted if the total compensation is reasonable. Payments made by creditors should be consistent with how they are disclosed under the new RESPA rules – namely, after netting with any payments made by the broker to the creditor be first allocated to broker compensation and then to a credit to other closing costs.

Full disclosure can be required of course in those and all other situations.

d. Record retention requirements

HPC believes that two years is an appropriate period for retaining records, and urges that such records be those that are kept in then normal course of business and need not be collected or created simply for purposes of compliance with this rule. Therefore, it seems that the HUD-1 is the best record of the compensation paid to brokers, and that normal salary and bonus records of creditor employees would be the appropriate records for those individuals.

HPC does not believe that there are sufficient cases in which third parties' activity would be relevant to warrant a provision in the rule addressed to third parties.

e. Prohibition on Steering

i. In General

HPC would support a rule that would prohibit steering if the loan is not in the consumer's interest. The anti-steering rule, however, should not apply to transactions where the broker's total compensation is customary and reasonable. For example, total broker compensation could be deemed to be reasonable if it does not exceed a certain percentage of the total loan amount, say 2%. If such an exception to the general rule was made, it is unlikely that consumers will be disadvantaged and operational burdens on brokers and lenders will be reduced.

In addition, the Board should clarify that the steering provisions do not apply to employees of the creditor.

In general, the rule should focus on whether or not the broker is steering the consumer to a transaction in order to receive greater total broker compensation than could have been received on other transactions the broker could have offered and the lender would have approved.

ii. Exemption for Affiliates

Employees of a creditor sometimes refer borrowers to an affiliated company for various reasons. For example, based on all of the circumstances, or simply because the customer entered the portal at the wrong place, an employee who originates closed end mortgages may recognize that the consumer instead wishes a home equity loan. That product is often offered by a different affiliate, and as a matter of good practice in assisting the customer, the originator refers the customer to that affiliate. Such references should not be considered steering. Compliance by an affiliate with the compensation rules should also be deemed compliance with the anti-steering rules.

iii. Safe Harbor

The proposed rule provides a safe harbor if the creditor offers three product alternatives that meet certain rules outlined in the proposal. We have some questions and comments on the safe harbor. First, would first and second liens be deemed to be different types of loans? We believe they are different types of loans, but would request certainty for purposes of the rule. Often a creditor will permit a broker to offer a lower rate to the consumer if points will be paid to buy down the rate. Clarity is needed in those cases to assist the creditor in knowing what the Board will deem to be the lower rate – e.g., a 5% interest rate and 10 discount points or a 5.125% rate and no discount points.

Finally, it appears to HPC that if an employee of a creditor complies with the terms of the safe harbor, such employee should not be subject to the compensation restrictions. Under the Proposal, compliance with Section 226.36(d)(1) provision against receiving compensation based on the terms of the loan would be deemed to satisfy the requirements of Section 226.36(e). We agree with this provision, but believe the Board needs to go further. Employees of a creditor should not be subject to the steering rules, but if an employee of a loan creditor complies with the provisions of Section 226.36(e), requiring the presentation of various loan options to the borrower, then such employee should not be subject to the compensation restrictions set forth in Section 226.36(d)(1). Transparency of the compensation of a creditor's employee, who is not a broker, is not relevant to the issue of steering when viable options are provided to the consumer. As long as the creditor and its employee comply with the provisions set forth in Section 226.36(e), requiring that the consumer receive a clear list of options, then the prohibition against receiving compensation based on the terms of the loan is unnecessary.

IX. Servicing Issues

a. Adjustable Rate Adjustment Notices

We support changing the minimum period of time that an adjustment notice must be provided before a payment change from 25 days to 60 days. However, exceptions should be provided for existing loans with look-back periods shorter than 45 days and construction and temporary loans.

Servicers need time after the index value becomes available to perform quality control checks before mailing the notices. For adjustable rate loans with application dates prior to the effective date of the revised regulation that have look-back periods shorter than 45 days, the adjustment notice should be provided within 15 days after the look-back date, but not less than 25 days prior to the payment change. If changes such as that are not made, servicers may find themselves forced to choose between being in compliance with the regulation and meeting the contractual obligations they have undertaken. Some interest rate indexes, for example, are not published on a schedule that would allow for compliance with a 60 day notice period.

Construction and temporary loans should continue to be exempt from the requirements to provide adjustment notices. The concern that borrowers have sufficient time to refinance before the amount increases is not relevant in these loans. Generally, construction and bridge loans have adjustable rates with short or no look-back period. Imposing the longer period may cause creditors to be reluctant to offer these products.

We request a clarification that servicers may include on the adjustment notices information that is required by the FHA or VA or by the Homeowner's Protection Act or other applicable law, and information required by Fannie Mae of Freddie Mac.

On the disclosure of prepayment penalties, the Proposal states, "The Board believes that disclosures regarding a prepayment penalty would assist consumers in determining when to seek a refinance loan." (See 74 FR 43273). Providing detail about the penalty would not only require significant reprogramming but once presented might well be inaccurate because it would be based on facts in existence before the notice went out. A better alternative would be to require disclosure of the existence of the penalty and to direct the borrower to contact the creditor for specific information about the penalty.

The language provided for the description of the interest rate in Model Form H-4(G) indicates that "Your rate will change due to an [increase] [decrease] in the (index)." This language does not appear to take into consideration the following situations: (1) the current and new rates are the same, (2) the old and new index values are the same, or (3) the current rate is a premium or discount rate so that the change in rate if any, is not entirely due to a change in the index value (or may be directionally different if the amount of the premium or discount exceeds the amount of the change in the index.). We request a clarification of what language should be included on the notice in these situations.

Providing an allocation of the current and new payment between principal, interest and escrow on interest only and negative amortization loans is a substantial compliance burden. In light of the fact that the notice must also include a Disclosure of New Monthly Payment that includes the amortizing payment as shown in model clauses H-4(H), it is also unnecessary. Since escrow payments may also be in the process of adjustment according to RESPA requirements, providing correct escrow information may be difficult. Furthermore, in light of the fact that most servicers provide a breakdown of how payments are applied on their monthly statements, this information is not necessary.

The Board should clarify that its intent is for the principal and interest allocation and the taxes and insurance allocation only to be required for interest only and loans with negative amortization.

Where an adjustable rate loan is converted to a fixed rate loan under a written agreement, no adjustment notice should be required.

b. Statement Requirements for Negative Amortization Loans with Payment Options

We recommend changing proposed Comment 20(d)(1) – 1 to remove the requirement to provide the table if the payment required by that statement and all subsequent required payments will fully amortize the loan. At this point in the life of the loan, the table does not provide any useful information to the consumer. We further request that if the servicer provides information on loans made prior to the effective date of the final regulation in substantial compliance with the Nontraditional Mortgage Guidance, that such disclosure should be deemed to comply with the requirements of section 226.20(d). We should also note that the Board's proposed form oversimplifies a complex product and provides inaccurate information in some cases. For example, the minimum payment will not always result in a negative amortization. In a declining rate environment, the minimum payment could be an over-amortizing payment.

c. Creditor Placed Insurance

i. In General

We support the Proposal's provisions on creditor placed insurance. The notice of creditor placed insurance should include a toll-free or a local telephone number through which the consumer may contact the creditor. We also suggest that all references to "creditor" in this section should refer to the creditor or the servicer performing these functions for the creditor. We also comment that questions have been raised whether the consumer should be charged for coverage for the time period after the consumer let the insurance lapse or coverage becomes inadequate. We note that a policy that creates a financial incentive for consumers to let their policies lapse or to become inadequate would be dangerous for both consumers and lenders.

ii. Proposed Model Notice

Currently the specific disclosures made by creditors vary from creditor to creditor. As such, we would request that flexibility be afforded to creditors regarding the exact disclosures the proposed rules would require. It should be noted that most creditors currently provide at least the notice(s) and level of detail set forth in the H-18 Model Clause, if not more. Thus, substantial compliance, and not less than the H-18 Model Clause should be deemed reasonable and sufficient notice. This would allow creditors to vary their disclosures as applicable, while still providing borrowers the information which will allow them to make an educated and informed decision. Further, in stating that substantial compliance with the H-18 Model Clause is reasonable and sufficient, the comment would bring much needed clarity to the creditor-placed notice cycle.

In light of the above, additional notices, such as the disclosure that a creditor may receive compensation and/or that a creditor may establish an escrow account should be included at the creditors discretion, depending on whether they are applicable.

iii. Proposed Disclosures in 45 Day Time Period

Currently the majority of creditors use between a twenty-eight (28) and a sixty (60) day multiple letter cycle to provide notice to the borrower of the creditor's intent to place insurance based on the borrower's failure to provide evidence of adequate voluntary coverage. The multiple letter cycle is preferential to a one-time disclosure as it provides the borrower notice on multiple occasions, over a specific period of time, with graduated intensity, prior to the insurance being placed by the creditor.

The first notice in the letter cycle serves as a general advisement that the creditor's records indicate that evidence of acceptable coverage has not been received by the creditor, although some creditors quote coverage amount, premium and other information in the initial notice letter. The notice further states that if the borrower does not provide proof of acceptable coverage, the creditor will obtain a creditor-placed policy.

The immediacy of the first notice affords the borrower the maximum amount of time to provide evidence of acceptable coverage prior to the creditor placing a policy. Even though the first notice is intended in some instances to serve as a less formal, friendly reminder, it still substantially addresses the disclosures found in the H-18 Model Clause, with the exception of the details of the creditor-placed policy.

If the borrower fails to provide evidence of acceptable insurance after receipt of the first notice, the creditor sends a more formal second notice, approximately between twenty-one (21) and thirty (30) days after the initial notice, again informing the borrower of the borrower's obligation to maintain coverage and notifying the borrower that the creditor will place coverage if the borrower does not provide evidence of voluntary coverage. This notice also provides the H-18 Model Clause disclosures, albeit in a possibly varied format, in addition to other applicable disclosures. Further, this second notice also includes detail regarding the actual policy that will be placed, such as the premium amount, effective date and coverage amount. This notice also informs the borrower that coverage has been bound starting with the date last known coverage expired, lapsed, or was cancelled.

If, after the second notice, the borrower still has failed to provide evidence of acceptable insurance, a third notice is sent, approximately between seven (7) and thirty (30) days after the second notice, and between twenty-eight (28) and sixty (60) days after the initial notice. The third notice informs the borrower that the creditor has obtained coverage, and re-stating the disclosures from the first two letters. The borrower is informed that they have the continuing right to obtain an acceptable voluntary policy at any time, thereby terminating the creditor-placed policy.

The above stated letter cycle results in the borrower having approximately between twenty-eight (28) and sixty (60) days from the time they are first notified of the lapse in adequate voluntary coverage until a creditor-placed policy is obtained.

The proposed rule would require all disclosures, including the premium amount, be provided via a forty-five (45) days notice. As referenced above, the current multiple letter notice cycle, providing increasingly formal notices over a minimum range of time, up to a maximum of sixty (60) days is preferable to just a forty-five (45) day notice period" , as it affords lenders the flexibility of providing borrowers with significantly more time and notice prior to the creditor placing insurance. Therefore, the notice period should be revised to allow for a series of notifications in which the required disclosures are made during a range of time, from a minimum of thirty (30) days up to a maximum of sixty (60) day period, with creditor-placed policy specifics, including the premium amount, provided in a notice to be given thirty (30) days prior to placement. Consistency with the 45 day notice of the flood regulations should be a target.

iv. Scope of Proposed Language

The proposed regulations should only be applicable to real property transactions. The National Association of Insurance Commissioners ("N.A.I.C.") has published a Creditor-Placed Insurance Model Act ("Model Act"), which has been substantially adopted by a number of states. However, the Model Act excludes insurance on collateralized real property (see NAIC 375-1, Sec. 2(B)(2)).

Since the respective state insurance commissioners have already drafted model legislation that states may adopt regarding oversight of creditor-placed insurance as it relates to personal property, including the appropriate notices; states currently have the apparatus to protect their citizens regarding personal property credit transactions.

Further, to the extent the proposed regulations would apply to personal property, there may be a direct conflict with legislative schemes of those states that have adopted the Model Act. Thus, the proposed rule regarding creditor-placed insurance should be limited to collateralized real property.

TILA regulations need to be consistent with flood regulations. For example, the Board's proposal would only permit creditor placed coverage if the borrower's coverage has lapsed, while the flood regulations require it if borrower's coverage is insufficient.

X. Harmonizing TILA and RESPA

HPC strongly recommends that the Board and HUD actively work to coordinate TILA and RESPA rules prior to promulgation of these proposed amendments to remove the confusion and inconsistency between the regulations currently implementing these two statutes. Not only does the lack of harmony create operational problems and litigation risks for creditors and loan originators, it makes comparative shopping for consumers very difficult. Disclosure of the same important points should be only in one document, not in both, and the agency best suited to develop the disclosure requirement should have the responsibility for doing so in concert with the suggestions from the other agency. Duplicate disclosures on the same point should be avoided.

Here are a few of the non-harmonious provisions highlighted by the present Proposal; a thorough investigation should be undertaken to fully understand the best methods for harmonization in these circumstances.

a. Pre-application disclosures- At the pre-application period, mortgage brokers should provide TILA's pre-application forms prior to application or collection of any fee, including the "Key Questions to Ask About Your Mortgage" "Fixed vs. Adjustable Rate Mortgages," and Adjustable Rate Loan Program Disclosures for programs in which consumers express an interest.

b. Duplication and inconsistencies between GFE and TILA disclosures- Harmonize GFE's "Summary of Loan" and "Escrow Account Information" sections with content and format of proposed TILA disclosure.

1. Require all loan originators to provide TILA disclosures and replace the Summary of Loan" and "Escrow Account Information" sections of the GFE with a cross reference to the TILA disclosure. Providing a TILA disclosure would be a new requirement for processing brokers, but they possess all of the information necessary to provide the TILA disclosures. It would be useful for consumers to have this information earlier in the process. The comparison of the APR to the APOR would be particularly helpful because it would alert the consumer to the possibility that the broker was steering the consumer to a relatively high priced loan.

2. As an alternative to the suggestion in 1, provide a different GFE form for processing brokers than creditors but require processing brokers to have the creditor mail or deliver early TILA disclosures to the consumer within three business days after the broker received the application from the consumer.

3.
    a. The creditor form would be the same as the GFE under 1 cross-referencing the TILA disclosure provided by the creditor.

    b. The processing broker form for brokers who are not creditors under TILA, provide a second GFE which replaces the Summary of Loan and Escrow Account Information sections with the "Loan Summary," "Interest Rate and Payment Summary," and "Key Questions About Risk" sections of the proposed TILA disclosures. Under this alternative, a processing broker would not have to disclose the APR or compare it to the APOR for comparable loans.

c. Proposed TILA All-in APR- A distinction should be made in the GFE and HUD-1 between charges incurred in the transaction and charges incurred because of the loan. Such a distinction can be made in TILA and that distinction seems most logical. Once HUD makes that distinction, reconciling the GFE and HUD-1 with the TILA disclosure will be much easier.

d. Treatment of amounts paid by third parties- The new TILA disclosures requires the disclosure of "Total Settlement Charges" as shown on the HUD-1. However, HUD's FAQs do not make it clear if this amount will reflect only the amounts the borrower will pay. There are ambiguities in the RESPA treatment of amounts paid by the seller, a builder, an employer of the broker or creditor.

e. Third party fees in finance charge- Third party fees in the finance charge should be limited to the estimated amounts plus 10%, consistent with RESPA's tolerance rules. Any amount over that will be paid only because the borrower chooses a provider other than one identified by the mortgage broker of creditor.

f. Timing rules and waiting periods

1. The final TILA disclosure must be received at least three precise business days before consummation and the RESPA final HUD-1 should be delivered at the same time. That will require the closing agent to finalize all fees and charges at least 8 business days prior to closing and provide that information to the creditor so the creditor may provide an accurate final TILA disclosure. All of the fees for the closing agent and for the services of third parties arranged by it should be disclosed as the closing or settlement fee on line 1102 of the HUD-1.

2. Loan terms and APR should be disclosed on TILA disclosures and TILA should govern the timing of redisclosures for changes to loan terms and APR. The creditor should be required to mail or deliver a revised TILA disclosure within three business days after the borrower amends their application or accepts a counteroffer to add a feature identified in the "Key Questions" disclosure as presenting additional risks. Other change in loan terms should not require redisclosure.

3. RESPA's requirements to provide a revised GFE should apply only to changes in fees beyond the applicable tolerance, not a change in loan terms.

4. Reductions in fees or in interest rates after the final TILA disclosure should not trigger requirements for an additional corrected TILA disclosure and a new waiting period.

XI. Translation Issues

This is an area in which the Board may wish to engage in further research. Some of our member companies have done some limited research, and have been surprised at the number and diversity of foreign languages in use in the United States. Some are only oral languages and have no written text; some use alphabets of different kinds and character than the Roman alphabet; many have a written language that may have different meanings for different speakers of the same language. In that environment, a field of study that could be better understood with further Board research, it would be wrong to create a presumption that translations or failures to provide them is an unfair or deceptive act or practice. Once beyond a requirement that creditors must provide a clear English language text, the subject becomes very difficult.

We believe that the Board should permit disclosures to continue to be made in English or a foreign language, and if a foreign language is selected by the creditor, an English translation should be required if requested by the consumer. Since different segments of U.S. consumers are fluent in different non-English languages, and because there are so many such non-English languages used, we do not support a requirement that creditors would have to make disclosures available in any language requested by a consumer. At the same time, should creditors wish to make non-English languages available, then they should be free to do so, but if they do, they should also be required to provide English language material should they be requested by the consumer.

It would be useful to both the consumers and the creditors if the Board would provide in the regulation and on its website translations into the major non-English languages of various standard documents and model clauses required by the regulation and published in English in the regulation by the Board. We would recommend that at a minimum, the Board provide such translations into the 10 non-English languages most frequently used in the U.S., and be prepared upon request to provide the translations into other non-English languages. We do not believe, however, that creditors must be required to use those texts of be bound by any text other than the English language text, since use of those forms would require fluency on the part of the creditors in those languages, something that is unreasonable if the number of languages is as great as the limited research done by our companies suggest.

We also believe it would be helpful if the Board provided translations on its website of all the standard loan programs offered by various government entities such as FHA, VA and the housing GSEs, and of the various mortgage booklets the government provides to borrowers..

XII. Conclusion

The Housing Policy Council appreciates the opportunity to comment on this proposed rule and looks forward to continuing to work with the Federal Reserve on the finalization of this rule. If you have any questions, please contact me at 202-289-4322.

With best wishes,

John H. Dalton

John H. Dalton
President
Housing Policy Council
The Financial Services Roundtable